

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the amendment filed on 09 July 2010.
2. Claims 1-14, 18, 28, 35-36 have been canceled.
3. Claims 15-17, 22, 23, 25-27 and 34 have been amended.
4. Claims 15-17, 19-27, 29-34 and 37-43 are currently pending and have been examined.
5. The rejections of claims 15-17, 19-27, 29-34 and 37-43 have been updated to reflect the amendments.
6. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09 July 2010 has been entered.

### **Response to Arguments**

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. However, in an effort to elucidate the applicability of the selected prior art, the Examiner has provided a riposte to the Applicant's arguments.

### **Claim Rejections - 35 USC § 101**

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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8. Claims **34** and **37- 43** are rejected under 35 U.S.C. 101 because the claimed invention is not directed to a secondary statutory subject matter/class.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In *re Bilski et al*, 88 USPQ 2d 1385 CAFC (2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. In this particular case, Claims **34** and **37- 43** are not tied to another statutory class, such as any hardware. Thus, it is unclear as to whether or not the claims are mere processes that involve purely human labor.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. Note the Board of Patent Appeals Informative Opinion *Ex parte Langemyer et al.*:

[http://iplaw.bna.com/iplw/5000/split\\_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0](http://iplaw.bna.com/iplw/5000/split_display.adp?fedfid=10988734&vname=ippqcases2&wsn=500826000&searchid=6198805&doctypeid=1&type=court&mode=doc&split=0&scm=5000&pg=0)

Appropriate correction is required.

#### **Claim Rejections - 35 USC § 112**

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 15 describes in preamble "A system comprising:" the body of the claim does not contain any limitations indicating the structure of the device. A system or an apparatus claim should always claim the structure and the hardware (concrete thing consisting of parts or of certain devices and combination of devices) that performs the function. The Applicant's claimed limitations consist of subsystems (subsystems are software according to the specification - software per se, rejection under USC 101) that do not describe the structure of the device. Appropriate correction is required and the system claim should positively claim the hardware.

#### **Claim Rejections - 35 USC § 102**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims **15-17, 19-27, 29-31, 33-34 and 37-43** are rejected under 35 U.S.C. 102(b) as being obvious over Gurel (US PGP 2004/0023636 A1 – herein referred to as Gurel).

11. **Claim 15:**

Gurel shown, discloses the following limitations:

- *subscriber database comprised of individual subscriber account records, each account record providing data relevant to a respective subscriber account, including at least an account balance (see at least page 2 paragraph 0031)*
- *balance manager in communication with the subscriber database for receiving real-time data characterizing a last terminated wireless telephone call chargeable to a subscriber*

*account, for rating the received real-time wireless telephone call characterizing data according to rating data from the subscriber database, for modifying the respective subscriber account record in the subscriber database on the basis of the rated real-time wireless telephone call characterizing data, and for providing subscriber account record data (see at least ABSTRACT)*

- treatment handler in communication with the balance manager for determining, based on the modified subscriber account record and if the last terminated wireless telephone call was not subject to real-time monitoring, whether a next wireless telephone call chargeable to the respective subscriber account is subject to wireless telephone call processing before and real-time monitoring during, the next wireless telephone call, or whether the next wireless telephone call chargeable to the subscriber account is subject to only wireless telephone call processing after termination of the next wireless telephone call or (ii) subject to only wireless telephone call processing after termination of the wireless telephone call (see at least page 2 paragraph 0031....see also ABSTRACT)*
- an event manager, in communication with the balance manager and the treatment handler, for configuring the next wireless telephone call, as determined by treatment handler, to be subject to either (i) wireless telephone call, or (ii) subject to only wireless telephone call processing after termination of the wireless telephone call, wherein the wireless telephone call characterizing data comprises data*
- called party identification data (see at least page 3 paragraphs 0041 and 0043)*
- calling party identification data (see at least page 3 paragraphs 0041 and 0043)*
- call direction data (see at least page 3 paragraph 0043)*
- call start and end times data (see at least page 3 paragraph 0043)*
- call duration data (see at least page 3 paragraph 0043)*
- call disposition data (see at least page 3 paragraphs 0041 and 0043)*
- call service area data (see at least page 3 paragraph 0041)*

**12. Claim 16:**

Gurel shown, discloses the following limitations:

- *balance manager, receives real-time wireless telephone call-characterizing data subsequent to the termination of the last wireless telephone call, rates the real-time wireless telephone call-characterizing data upon receipt, and modifies the respective subscriber account record in the subscriber database on the basis of the rated real-time wireless telephone call-characterizing data, (see at least page 2 paragraphs 0031 and 0033)*

**13. Claim 17:**

Gurel shown, discloses the following limitations:

- *treatment handler is further adapted to perform wireless telephone call processing after termination of the last wireless telephone call through analysis of the modified subscriber account record with respect to predefined business rules (see at least ABSTRACT....see also page 2 paragraph 0033)*

**14. Claim 19:**

Gurel shown, discloses the following limitations:

- *subscriber database, balance manager and event manager are adapted to perform wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, through the provision of subscriber account record data from the subscriber database to the event manager via the balance manager and the accumulation of real-time wireless telephone call-characterizing data by the event manager during the wireless telephone call (see at least page 2 paragraph 0031....see also ABSTRACT)*

**15. Claim 20:**

Gurel shown, discloses the following limitations:

- *balance manager and event manager are further adapted to perform wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, through the provision of accumulated real-time wireless telephone call-characterizing data from the event manager to the balance manager subsequent to the -wireless telephone call (see at least page 2 paragraphs 0031 and 0033)*

**16. Claim 21:**

Gurel shown, discloses the following limitations:

- *balance manager and subscriber database are further adapted to rate the real-time wireless call- characterizing data upon receipt at the balance manager and to modify the respective subscriber account record in the subscriber database on the basis of the rated real-time wireless telephone call-characterizing data for subscribers subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call (see at least page 2 paragraphs 0031 and 0033)*

**17. Claim 22:**

Gurel shown, discloses the following limitations:

- *treatment handler is adapted to determine whether the next wireless telephone call chargeable to the subscriber account is subject to wireless telephone call processing before, and real-time monitoring during, the next wireless telephone call, or subject to only wireless telephone call processing after termination of the next wireless telephone call on the basis of one or more metrics selected from the group consisting of cash balance, credit balance, debt balance, applicable rate plan, home or roaming status, payments due, and credit rating (see at least ABSTRACT....see also page 2 paragraph 0033)*

**18. Claim 23:**

Gurel shown, discloses the following limitations:

- *treatment handler is further adapted to perform wireless telephone call processing after termination of the last wireless telephone call through the establishment of a treatment*

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*identifier which, when analyzed by the event manager upon receipt of an initiation request for the next wireless telephone call, identifies whether the next wireless telephone call chargeable to the respective subscriber account is subject to wireless telephone call processing after termination of the wireless telephone call or wireless telephone call processing before and real-time monitoring during, the next wireless telephone call (see at least ABSTRACT....see also page 2 paragraph 0033)*

**19. Claim 24:**

Gurel shown, discloses the following limitations:

- *payment portal associated with the balance manager for enabling real-time modification of a subscriber account record (see at least page 3 paragraph 0043)*

**20. Claim 25:**

Gurel shown, discloses the following limitations:

- *balance manager is responsive to a modification of a subscriber account record, in the subscriber database, initiated by the payment portal, by sending a payment received signal to the treatment handler (see at least page 3 paragraph 0043)*

**21. Claim 26:**

Gurel shown, discloses the following limitations:

- *treatment handler is responsive to receipt of the payment received signal from the balance manager by analyzing the modified subscriber account record with respect to predefined business rules stored in conjunction with the treatment handler (see at least page 3 paragraph 0043)*

**22. Claim 27:**

Gurel shown, discloses the following limitations:

- *treatment handler analysis of the modified subscriber account record in response to the payment received signal is for determining whether further future real-time wireless telephone calls chargeable to the respective subscriber account record are subject to only wireless telephone call processing after termination of the wireless telephone call*

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*or are subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call when the treatment handler has, prior to receipt of the payment received signal, determined that the next wireless telephone call would be subject to real-time monitoring (see at least ABSTRACT.....see also page 2 paragraphs 0031 and 0033)*

**23. Claim 29:**

Gurel shown, discloses the following limitations:

- *messaging agent in communication with the treatment handler for the selective delivery of a message to a subscriber (see at least ABSTRACT.....see also page 3 paragraph 0042)*

**24. Claim 30:**

Gurel shown, discloses the following limitations:

- *messaging agent is comprised of a database of predetermined messages selectable by the treatment handler for delivery to a subscriber according to a treatment handler analysis of the respective subscriber account record (see at least ABSTRACT.....see also page 3 paragraph 0042)*

**25. Claim 31:**

Gurel shown, discloses the following limitations:

- *messaging agent is adapted for incorporating data provided by the treatment handler in a selected predetermined message for delivery to a subscriber (see at least ABSTRACT.....see also page 3 paragraph 0042)*

**26.** Claim 32 is rejected under 35 U.S.C. 103(a) as being obvious over Gurel (US PGP 2004/0023636 A1 – herein referred to as Gurel) in view of Dominguez et al. (US PGP 2003/0200184 A1 – herein referred to as Dominguez).

**27. Claim 32:**



Gurel does not expressly disclose ***messaging agent is adapted to deliver a message in a medium selected from the group consisting of text, graphics and audio.***

However, Dominguez does disclose a third aspect of the invention pertains to a method for authenticating the identity of an account holder wherein the account holder uses a mobile device capable of receiving and transmitting voice and/or text messages. This method involves establishing and conducting a transaction between an account holder and a requesting party over a first voice or messaging channel, sending a payment authentication request message (PAREq) from the requesting party to the trusted party over the Internet, establishing a connection between the account holder and the trusted party over a second voice or messaging channel, and transmitting an authenticating token from the account holder to the trusted party over the second voice or messaging channel.....(see at least page 2 paragraph 0011).

28. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine Gurel and Dominguez with the practitioners own knowledge in order to disclose a mobile account authentication service and a wireless prepaid payphone system and cost control application because this provides way for mobile phone users to monitor and control their account usage.

29. **Claim 33:**

Gurel shown, discloses the following limitations:

- *messaging agent is adapted to deliver a message immediately upon being instructed by the treatment handler or at a future time* (see at least ABSTRACT.....see also page 3 paragraph 0042)

30. **Claim 34:**

Gurel shown, discloses the following limitations:

- *analyzing a subscriber account record at a treatment handler with respect to predetermined values available thereto for determining if a subsequent subscriber initiated wireless telephone call is to be subject to wireless telephone call processing before and real-time monitoring during, the subsequent wireless telephone call, or if the*

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*subsequent subscriber-initiated wireless telephone call is to be subject to only wireless telephone call processing after termination of the wireless call (see at least ABSTRACT....see also page 2 paragraph 0033)*

- *establishing a treatment identifier reflective of the treatment handler analysis (see at least ABSTRACT....see also page 3 paragraph 0042)*
- *receiving, at an event manager, a subscriber wireless telephone call initiation request to the telecommunications service plan for the subsequent subscriber-initiated wireless telephone call (see at least ABSTRACT....see also page 3 paragraph 0042)*
- *referring to the respective subsequent subscriber-initiated wireless telephone call is: (i) subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, or (ii) subject to only wireless telephone call processing after termination, wherein if the treatment indicator indicates to the event manager that the subsequent subscriber-initiated wireless telephone call is subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, retrieving data from a respective subscriber account record maintained by a balance manager in an associated subscriber database, by the event manager, for determining if the subscriber record data is sufficient to authorize wireless telephone call initiation, wherein the subscriber account record includes data characterizing a last terminated wireless telephone call chargeable to the subscriber account, and wherein the treatment handler analyzes the subscriber account record if the last terminated wireless telephone call chargeable to the subscriber account was not subject to real-time monitoring (see at least page 3 paragraphs 0042 and 0043)*

**31. Claim 37:**

Gurel shown, discloses the following limitations:

- *authorizing wireless telephone call initiation by the event manager in response to determining the subscriber account record data is sufficient (see at least ABSTRACT....see also page 2 paragraphs 0031 and 0033)*

- *monitoring the wireless telephone call in real-time subsequent to wireless communication telephone call initiation* (see at least ABSTRACT ....see also page 2 paragraphs 0031 and 0033)

**32. Claim 38:**

Gurel shown, discloses the following limitations:

- *sending real-time wireless telephone-call related data to the balance manager by the event manager subsequent to wireless telephone call termination* (see at least page 3 paragraphs 0042 and 0043)
- *rating the real-time wireless telephone call-related data by the balance manager* (see at least see at least page 2 paragraph 0034)
- *updating the respective subscriber account record by the balance manager on the basis of the rated real-time wireless telephone call-related data* (see at least page 3 paragraphs 0042 and 0043)
- *called party identification data* (see at least page 3 paragraphs 0041 and 0043)
- *calling party identification data* (see at least page 3 paragraphs 0041 and 0043)
- *call direction data* (see at least page 3 paragraph 0043)
- *call start and end times data* (see at least page 3 paragraph 0043)
- *call duration data* (see at least page 3 paragraph 0043)
- *call disposition data* (see at least page 3 paragraphs 0041 and 0043)
- *call service area data* (see at least page 3 paragraph 0041)

**33. Claim 39:**

Gurel shown, discloses the following limitations:

- *identifying, by the treatment handler, one of a set of predetermined messages associated with a messaging agent* (see at least page 3 paragraph 0042)
- *instructing, by the treatment handler, the messaging agent to deliver the identified message* (see at least page 3 paragraph 0042)

**34. Claim 40:**

Gurel shown, discloses the following limitations:

- *authorizing wireless telephone call initiation if the treatment indicator indicates to the event manager that the wireless telephone call is subject to only wireless telephone call processing after termination of the wireless telephone call monitoring (see at least page 3 paragraph 0043)*

**35. Claim 41:**

Gurel shown, discloses the following limitations:

- *sending real-time wireless telephone call-related data to the balance manager by the event manager subsequent to wireless telephone call termination (see at least page 3 paragraphs 0042 and 0043)*
- *rating the real-time wireless telephone call-related data by the balance manager (see at least see at least page 2 paragraph 0034)*
- *updating the respective subscriber account record by the balance manager on the basis of the rated real-time wireless telephone call-related data (see at least page 3 paragraphs 0042 and 0043)*
- *indicating to the event manager, by the balance manager, that the respective subscriber account record has been modified (see at least page 3 paragraphs 0042 and 0043)*

**36. Claim 42:**

Gurel shown, discloses the following limitations:

- *receiving a payment from a subscriber at a payment portal associated with the balance manager (see at least ABSTRACT and FIG. 2B)*
- *subscriber is subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, notifying the treatment handler of a change in the subscriber account record (see at least ABSTRACT....see also page 2 paragraphs 0031 and 0033)*

**37. Claim 43:**

Gurel shown, discloses the following limitations:

- *re-analyzing data characteristic of the subscriber account record by the treatment handler for determining if a subsequent subscriber-initiated wireless telephone call is again to be subject to wireless telephone call processing before, and real-time monitoring during, the wireless telephone call, or if the subsequent subscriber-initiated wireless telephone call is to be subject to only wireless telephone call processing after termination of the wireless telephone call* (see at least page 2 paragraph 0033 and see also page 3 paragraphs 0042 and 0043)
- *establishing a treatment identifier reflective of the treatment handler re-analysis* (see at least page 2 paragraph 0033....see also page 3 paragraphs 0042 and 0043)

### CONCLUSION

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Michael D. Cranford** whose telephone number is **571-270-3106**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Charles Kyle** can be reached at **571-272-6746**.

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/ Michael Cranford / Examiner / Art Unit 3695 /  
May 21, 2011

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